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# The First Othello: A Tribute to the Anglo-American Adversary System

Larry M. Wertheim

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## THE FIRST *OTHELLO*: A TRIBUTE TO THE ANGLO-AMERICAN ADVERSARY SYSTEM

Larry M. Wertheim<sup>†</sup>

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### I. INTRODUCTION

Recently, attention to the legal system has focused on a black man, famous for his physical prowess and for living in a white-centered world. He married a beautiful, younger Caucasian woman and became enmeshed in allegations of infidelity, the passion of jealousy, and the brutal murder of his wife. While the recent trial involving a personage of that description has been referred to as "The Trial of the Century," seemingly, despite exhaustive efforts, little has been drawn from that experience in the way of useful conclusions about the legal system. An earlier trial of the Seventeenth Century, however, also involved a black man living in a predominantly white world, who became famous for his physical prowess, who married a

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<sup>†</sup> Member, Kennedy & Graven, Chartered, Minneapolis, Minnesota; Adjunct Professor of Law, William Mitchell College of Law, St. Paul, Minnesota; Adjunct Professor of Law, Hamline University of Law, St. Paul, Minnesota; A.B. 1971, University of California, Berkeley; M.A. 1973, University of Wisconsin; J.D. 1976, University of Minnesota. I wish to thank Lonnie Durham, Assistant Professor Emeritus of English, University of Minnesota, for his kind assistance with this article.

beautiful, younger white woman over cultural objections, and whose wife was brutally murdered in circumstances involving allegations of infidelity and the passion of jealousy. That earlier black individual has even been the subject of a recently-released Hollywood film.<sup>1</sup> The earlier personage, of course, is Othello, the fictional protagonist of William Shakespeare's *The Tragedy of Othello, The Moor of Venice*.<sup>2</sup>

The subject of law and literature has been under serious study for at least ten years. Numerous extended studies of Shakespeare's plays, particularly *The Merchant of Venice* and *Measure for Measure*, have been undertaken.<sup>3</sup> Law and literature scholars, however, have paid surprisingly little attention to *Othello*.<sup>4</sup> This is a mistake. *Othello* constitutes an articulation of

1. OTHELLO (Columbia 1995) (Laurence Fishburne as Othello). Earlier versions of the play have also been filmed. OTHELLO (Mercuryl Films Marceau 1955) (Orson Welles as Othello); OTHELLO (BHE 1965) (Laurence Olivier as Othello).

2. WILLIAM SHAKESPEARE, THE TRAGEDY OF OTHELLO THE MOOR OF VENICE (Christopher Bentley ed., Sydney University Press 1982) [hereinafter OTHELLO] (first produced in 1603-04). All references to *Othello*, the play, are to this edition.

3. See, e.g., RICHARD A. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 91-99, 101-10 (1988); RICHARD WEISBERG, POETHICS: AND OTHER STRATEGIES OF LAW AND LITERATURE 93-104, 206-10 (1992); DANIEL J. KORNSTEIN, KILL ALL THE LAWYERS? SHAKESPEARE'S LEGAL APPEAL 35-89 (1994); Peter J. Alscher, *Staging Directions for a Balanced Resolution to "The Merchant of Venice" Trial Scene*, 5 CARDOZO STUD. L. & LITERATURE 1 (1993); Jay L. Halio, *Portia: Shakespeare's Matlock?*, 5 CARDOZO STUD. L. & LITERATURE 57 (1993); Marci A. Hamilton, *The End of Law*, 5 CARDOZO STUD. L. & LITERATURE 125 (1993); Clayton Koelb, *The Bonds of Flesh and Blood: Having it Both Ways in "The Merchant of Venice"*, 5 CARDOZO STUD. L. & LITERATURE 107 (1993); Daniel J. Kornstein, *Fie Upon Your Law!*, 5 CARDOZO STUD. L. & LITERATURE 35 (1993); Susan Oldrieve, *Marginalized Voices in "The Merchant of Venice"*, 5 CARDOZO STUD. L. & LITERATURE 87 (1993); David B. Saxe, *Shylock, Portia and a Case of Literary Oppression*, 5 CARDOZO STUD. L. & LITERATURE 115 (1993); Charles Spinosa, *Shylock and Debt and Contract in "The Merchant of Venice"*, 5 CARDOZO STUD. L. & LITERATURE 65 (1993).

4. See generally POSNER, *supra* note 3 (making no mention of *Othello*); WEISBERG, *supra* note 3 (making no mention of *Othello*). Even Kornstein's book which is the fullest treatment of the law and literature issues and Shakespeare's plays generally, deals with *Othello* briefly and only in connection with a discussion of the law of slander and libel. KORNSTEIN, *supra* note 3, at 157-65. The only other published piece is a fictional appellate decision in the trial of Othello, who, contrary to published accounts, unsuccessfully attempted suicide, and was tried for the murder of Desdemona. P. Michael Nagle, Jr., *Commonwealth v. Othello*, 14 MD. L.F. 104 (1977). The fictional appellate court, rejecting various defenses such as consent, insanity, and heat of passion, found Othello guilty of murder in the first degree. *Id.* at 109. While Elizabeth Gemmette, in her listing of the "Law and Literature Canon," does record *Othello* along with nine other Shakespeare plays, she notes that the play is used in "law and literature" classes far less frequently than either *Merchant* or *Measure*. Elizabeth Villiers Gemmette, "Law and Literature: Joining the Class Action," 29 VAL. U. L. REV. 665, 686-87, 809 (1995).

the merits of the English, and later American, adversary systems, including the importance of both a neutral decision-maker and the right to compel testimony. The Anglo-American system, where the judge is a neutral arbitrator between the adversarial parties, is to be contrasted with the Continental-inquisitorial scheme or some military judicial procedures where the examining magistrate himself conducts the inquiry and the examination.<sup>5</sup>

In effect, the play presents two trials on the charge of witchcraft, one against Othello in Venice, the other against Desdemona in Cyprus.<sup>6</sup> While only the trial against Othello is explicitly for the wrong of witchcraft, the accusations against Desdemona in Cyprus amount to the same thing. Both are charged with witchcraft and both are innocent. Yet, Othello is acquitted and Desdemona is convicted. The thesis of this essay is that *Othello* exhibits the importance of the English adversary judicial system. On the one hand, the play displays the English-like Duke's court in Venice which calmly and judiciously considers (and rightly rejects) the allegations that Othello used magic to seduce Desdemona. In contrast, the play also presents the Cyprus venue, resembling the Continental-inquisitorial method or a drumhead military court, where Othello wrongly accepts Iago's allegations of Desdemona's infidelity and condemns her to death.

## II. THE STORY OF *OTHELLO*

For those unfamiliar with Shakespeare's *Othello*, the following is a brief outline of the plot:

Othello, a black, Christian Moor, is commander of the military forces of Venice and has fallen in love with and secretly married Desdemona, the beautiful daughter of Brabantio, a senator of Venice. Iago, a soldier serving under Othello, hates the Moor, perhaps because Othello has promoted Cassio, a Venetian soldier, as lieutenant over Iago or perhaps for one of many other reasons. Iago enlists Roderigo, a former suitor of Desdemona, in Iago's efforts at revenge. The two awake

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5. POSNER, *supra* note 3, at 134; RICHARD H. WEISBERG, *THE FAILURE OF THE WORD* 45-48 (1984).

6. STANLEY CAVELL, *Othello and the Stake of the Other*, in *DISOWNING KNOWLEDGE IN SIX PLAYS BY SHAKESPEARE* 125 (1987).

Brabantio to tell him that Othello has eloped with Desdemona. This news enrages Brabantio who organizes an armed band to search out Othello. At the moment Brabantio's gang come to seize Othello, Cassio comes to advise Othello that he is wanted by the Duke and senators of Venice to meet with them about a possible Turkish invasion. Othello persuades Brabantio to accompany him to the Duke where Brabantio can present his case regarding Othello's "theft" of Desdemona.

Before the Duke and the other senators, Brabantio presents his claim that Othello has stolen his daughter by witchcraft. In response, Othello describes his courtship of Desdemona. At Othello's request, Desdemona is brought to testify at the trial. She tells the Duke, the senators and her father that she married Othello because she loves him. The Duke finds that Othello is not guilty of bewitchment and orders him immediately to Cyprus, a colony of Venice, to defend against the Turks. Desdemona is granted her wish to join him there. Iago, in a soliloquy, begins his plot, to use Othello's marriage to Desdemona against the Moor.

The Turkish fleet is destroyed in a storm and Venice is victorious. Cassio, Desdemona, Iago, and Emilia (Iago's wife and Desdemona's attendant) arrive safely in Cyprus. When Othello's ship finally arrives, Desdemona and Othello joyfully greet each other.

During the celebrations of the victory over the Turks, Iago induces Cassio, who is susceptible to liquor, to become drunk. Iago then arranges for Roderigo to provoke the drunken Cassio into a fight in which another soldier is wounded. Othello, woken from his bed, stops the brawl and, when it is disclosed that Cassio was acting unsoldierly, strips him of his lieutenantcy and gives the position to Iago. Iago, purportedly sympathizing with Cassio, tells Cassio to induce Desdemona to help reinstate him. Iago also tells Desdemona to support the wronged Cassio. Iago skillfully and unobtrusively brings to Othello's attention Desdemona's conduct in a manner suggesting that Cassio is her lover.

Othello is troubled by these insinuations and complains to Desdemona of a headache. Desdemona offers to bandage his head with a handkerchief which Othello had previously given her, but, unbeknownst to either, the handkerchief is dropped and picked up by Emilia. Emilia gives Desdemona's handker-

chief to Iago, who had repeatedly asked her to steal it for him.

Othello becomes more and more troubled by Iago's insinuations and demands "ocular proof." Iago then tells Othello that one night in his sleep Cassio spoke of making love to Desdemona and that Iago had once seen Cassio with the lost handkerchief. Othello and Iago vow to kill Desdemona and Cassio, respectively.

Desdemona, still championing Cassio, is questioned by Othello about the missing handkerchief and is rebuked by him when she is unable to produce it. Separately, Iago places the missing handkerchief in Cassio's room and Cassio, liking its design, asks his mistress, Bianca, to copy it for him.

Othello, tormented by Iago's suggestions of his wife's infidelity, lapses into an epileptic fit. In order to confirm Othello's suspicions, Iago places Othello so as to permit him to overhear Iago's conversation with Cassio, in which Cassio's bawdy references to his mistress are mistaken by Othello as references to Desdemona. Also, Cassio is seen in possession of Desdemona's handkerchief. When emissaries from Venice direct Othello to return to Venice and appoint Cassio to preside over Cyprus, Othello is enraged and strikes Desdemona in the presence of the Venetians.

Othello questions Emilia about Desdemona's fidelity but remains unconvinced by Emilia's defense of her lady. Iago continues to reassure Desdemona of Othello's affection. Othello then orders Desdemona to her bed and dismisses Emilia.

Iago induces Roderigo to attack Cassio, who, while uninjured, stabs Roderigo. In the confusion, Iago stabs Cassio in the leg. Othello, hearing Cassio's cry and thinking Cassio dead, departs to murder Desdemona. Iago, fearful of disclosure of his plot, kills the wounded Roderigo.

Othello enters the bedroom of the sleeping Desdemona. He kisses her, wakes her, and charges her again with infidelity, citing the alleged admissions by Cassio to Iago. Desdemona vigorously denies the charges and repeatedly requests that Cassio be brought to testify. Othello refuses and smothers his wife. Emilia comes to the bedroom and, after Iago, Cassio, and others are brought there, Emilia discloses the truth about the handkerchief and accuses her husband of a plot. Othello unsuccessfully attempts to kill Iago who does kill his own wife, Emilia. Now aware of his immense error, Othello, using a hidden knife, stabs

himself and falls dead on the bed with Desdemona and Emilia. Iago is taken away to be tortured and executed. Cassio becomes governor of Cyprus.

### III. A TALE OF TWO TRIALS

*Othello* is, in large part, a tale of two trials. Othello is put on trial for the crime of using witchcraft to seduce Desdemona.<sup>7</sup> As Brabantio tells the Duke and the court:

She is abus'd, stol'n from me, and corrupted  
By spells and medicines bought of mountebanks;  
For nature so prepost'rously to err,  
(Being not deficient, blind, or lame of sense)  
Sans witchcraft could not.<sup>8</sup>

Similarly, although the expressed charge in Cyprus by Othello against Desdemona is that of adultery, Othello's accusation can also be viewed as that of practicing witchcraft.

As Stanley Cavell has pointed out, the names of Othello and Desdemona themselves contain "hell" and "demon." In addition, the nature and expression of Othello's charges bear more than a little resemblance to an accusation of witchcraft.<sup>9</sup> Thus, Othello announces at the beginning of the final scene, "she must die, else she'll betray more men."<sup>10</sup> He seems to believe that Desdemona is not merely an unfaithful spouse, but, more importantly, an enchantress who can bewitch not only her husband, but men in general. Thus, from that perspective, the play presents not one, but two trials for witchcraft.

It is the contention of this article that the evidence against Othello in Venice of the crime of witchcraft is just as strong as, if not stronger than, the evidence upon which Othello condemns Desdemona in Cyprus. Since both accused are innocent of any crime of witchcraft, we must search for another explanation as

7. In Shakespeare's *A Midsummer Night's Dream*, another father, Egeus, accuses Lysander, a suitor of his daughter, of using magic to win his daughter, Hermia. Egeus tells Theseus, the Duke of Athens, that Lysander "has bewitched the bosom of my child." William Shakespeare, *A Midsummer Night's Dream*, act 1, sc. 1, line 28. However, in that play it is the daughter, not the allegedly bewitching suitor, who is at risk by the law. Hermia is subject to the death penalty (or a life of enforced chastity) if she disobeys her father's order that she marry another suitor, Demetrius. *Id.* at act 1, sc. 1, lines 64-68, 120-23.

8. OTHELLO, *supra* note 2, act 1, sc. 3, lines 60-64.

9. CAVELL, *supra* note 6, at 140-41.

10. OTHELLO, *supra* note 2, act 5, sc. 2, line 16.

to why the different results are obtained. The two trials within the play comment upon each other and allow some conclusions to be drawn regarding the respective trials in Venice and Cyprus.

# IV. THE WEIGHT OF THE EVIDENCE AGAINST OTHELLO

While the accusation against Othello of witchcraft undoubtedly strikes modern audiences as at least somewhat preposterous, it would not be so to Shakespeare’s audience. The charge of witchcraft brought in Venice against Othello was one that was familiar to Shakespeare’s audiences. Before the court, Othello announces that he will tell the Duke and the Senators with “What conjuration, and what mighty magic” he has won Desdemona.<sup>11</sup> This formulation closely follows the prohibition in English law at the time against conjuration, witchcraft, enchantment, sorcery and provoking any person to unlawful love.<sup>12</sup> Thus, Brabantio’s charge against Othello was recognizable *prima facie* as a crime.

In addition, it is noteworthy that the claim of the use of witchcraft to seduce Desdemona is not raised by Iago, but by Brabantio himself and without the direct suggestion of Iago. In the street outside Brabantio’s residence, Iago does accuse Othello of seduction and even miscegenation. Thus, Iago tells Brabantio, “Even now, now, very now, an old black ram/Is tuppung your white ewe,”<sup>13</sup> and “your daughter and the Moor are now making the beast with two backs.”<sup>14</sup> There is no specific mention, however, of the use of magic or witchcraft by Othello. Later in that same scene, Brabantio himself first suggests that his daughter was seduced by magic: “Is there not charms/By which the property of youth and maidhood/May be abus’d?”<sup>15</sup> Then, when he confronts Othello, Brabantio directly accuses the Moor of magic:

thou has enchanted her,  
For I’ll refer me to all things of sense,  
If she in chains of magic were not bound

.....

11. *Id.* at act 1, sc. 3, line 93.

12. *See* O. HOOD PHILLIPS, SHAKESPEARE AND THE LAWYERS 121 (1972) (stating that Shakespeare was closely following the statute 33 Henry VIII, cap. 8 (1541-42)).

13. OTHELLO, *supra* note 2, act 1, sc. 1, lines 87-88.

14. *Id.* act 1, sc. 1, line 115.

15. *Id.* act 1, sc. 1, lines 171-73.



thou has practis'd on her with foul charms,  
Abus'd her delicate youth with drugs or minerals  
That weakens motion . . .

.....  
For an abuser of the world, a practiser  
Of arts inhibited, and out of warrant.<sup>16</sup>

Thus, the credibility of the witchcraft accusation against Othello is strengthened because it is first and wholly made by the presumably sincere Brabantio, not the corrupt Iago.

Even aside from the sincerity of Brabantio's accusation, the case against Othello seems strong. Othello's explanation for Desdemona's falling in love with him is that it innocently occurred while he was a guest in the house of Brabantio. There she overheard his recounting the story of his life, including all the suffering he had endured and the fantastic dangers he had encountered, including being sold into slavery and encountering cannibals.<sup>17</sup> Othello testified that Desdemona "swore, in faith 'twas strange, 'twas passing strange; 'Twas pitiful, 'twas wondrous pitiful . . . She lov'd me for the dangers I had passed."<sup>18</sup> As an explanation this seems somewhat lacking, especially in view of Brabantio's uncontested description of Desdemona as, "A maiden never bold:/Of spirit so still and quiet that her motion/Blush'd at herself."<sup>19</sup> As Brabantio puts it, it seems inherently incredible for Desdemona, "To fall in love with what she fear'd to look on!"<sup>20</sup>

In fact, when called to testify, Desdemona never specifically denies that she was the victim of witchcraft. She only recites to Brabantio that, while as his daughter, she was bound to respect him, "as my mother show'd/To you, preferring you before her father," she was in love with Othello.<sup>21</sup> Such indirect denial of the accusation, while eloquent, is not particularly persuasive.

Moreover, the play makes it clear that Othello is a believer in and a practitioner of magic. Othello later recounts to Desdemona the history of the handkerchief he had given her:

That handkerchief

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16. *Id.* act 1, sc. 2, lines 62-64, 72-74, 77-78.

17. *Id.* act 1, sc. 3, lines 128-70.

18. *Id.* act 1, sc. 3, lines 159-61, 167.

19. *Id.* act 1, sc. 3, lines 94-96.

20. *Id.* act 1, sc. 3, line 98.

21. *Id.* act 1, sc. 3, lines 185-86.

Did an Egyptian to my mother give:  
 She was a charmer, and could almost read  
 The thoughts of people. She told her, while she kept it,  
 'Twould make her amiable, and subdue my father  
 Entirely to her love; but if she lost it,  
 Or made a gift of it, my father's eye  
 Should hold her loathed, and his spirit should hunt  
 After new fancies.<sup>22</sup>

After Othello told Desdemona that he was given the handkerchief on his mother's deathbed with a promise never to give it away, Desdemona questions whether this was possible. Othello responds, "'Tis true: there's magic in the web of it."<sup>23</sup>

While obviously such evidence was not presented to the court in Venice, evidence is presented at the trial by Othello himself which strongly suggests his belief in and familiarity with magic. During the course of his defense, he recounts the story of his life, which he had earlier told to Brabantio and Desdemona, and expressly acknowledges his exposure to magic-like phenomena. Specifically, he recalls his experiences with "the Cannibals that each others eat,/The Anthropophagi [man-eaters], and men whose heads/Do grow beneath their shoulders."<sup>24</sup> While a familiarity with cannibals and headhunters would not strike the Venetian court as evidence of black magic, a belief in a race of humans whose heads grow beneath their shoulders strongly suggests a belief in the supernatural. Thus, by his own words, Othello incriminates himself, the weight of the evidence strongly supports the accusation of witchcraft against him.

## V. THE WEIGHT OF THE EVIDENCE AGAINST DESDEMONA

In Cyprus, where the accused Desdemona is found guilty, the conviction is not necessarily based upon overwhelming evidence presented by Iago to Othello. This is particularly the case when that evidence is compared to the evidence which was insufficient to convict Othello in Venice.

The case-in-chief against Desdemona upon which Othello convicts her in Cyprus consists of various pieces of circumstantial

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22. *Id.* act 3, sc. 4, lines 55-63.

23. *Id.* act 3, sc. 4, line 69.

24. *Id.* act 1, sc. 3, lines 143-44.

evidence.

First, Othello once comes upon a conversation between Desdemona and Cassio.<sup>25</sup> Also, Desdemona repeatedly urges Othello to consider reinstating Cassio.<sup>26</sup> While to Othello these facts may seem to support a claim of adultery, in fact they are merely attempts by Cassio to enlist Desdemona to help him gain the good graces of Othello. Even from Othello's perspective, they seem to be fairly innocent. In fact, prior to their marriage, at Othello's request, Cassio had served as an intermediary between the lovers.<sup>27</sup> It is only natural that Cassio and Desdemona would have reason to converse and that she, for no ulterior motive, would lobby on his behalf before her husband.

Secondly, Othello partially overhears a conversation between Cassio and Iago in which Cassio, without referring to Desdemona, makes comments about an unnamed woman and then is publicly castigated by Bianca, a woman known as Cassio's courtesan.<sup>28</sup> While Othello, under the suggestion of Iago, is given to believe that Cassio is making indecorous comments about Desdemona, given the immediately ensuing appearance of Cassio's courtesan, the conclusion about the subject of Cassio's comments is not compelled.

Thirdly, in what is probably the most persuasive piece of evidence, Othello sees Bianca return Desdemona's handkerchief to Cassio, which Cassio had previously given to Bianca.<sup>29</sup> While this is some evidence of the alleged infidelity, still these are at most ambiguous circumstances. No mention is made by Cassio as to how he came into possession of the handkerchief and there is no proven "chain of possession" from Desdemona to Cassio.

Finally, there is much naked and uncorroborated innuendo and insinuation of Iago, including a claim by Iago that he overheard the sleeping Cassio declare his love of Desdemona.<sup>30</sup>

If uncontested, such evidence might be a basis to conclude that Desdemona was guilty of adultery. The claim of adultery, however, is strongly contested. Against the claim of adultery are the ardent, open and express, albeit, self-serving, denials by both

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25. *Id.* act 3, sc. 3.

26. *Id.* act 3, sc. 3, lines 41-83; act 3, sc. 4, lines 89-94.

27. *Id.* act 3, sc. 3, lines 94-100.

28. *Id.* act 4, sc. 1, lines 94-169.

29. *Id.* act 4, sc. 1, lines 148-59.

30. *Id.* act 3, sc. 3, lines 410-30.

### Desdemona and Emilia of the alleged infidelity.<sup>31</sup>

In addition, more evidence of the weakness of Othello's case is presented immediately after Othello carries out his death sentence on Desdemona. At the speed of a freight train, the evidence to acquit Desdemona comes to light: (a) Emilia admits the exculpatory circumstances under which the handkerchief found its way from Desdemona to Iago;<sup>32</sup> (b) Iago exposes his villainy by killing his wife; (c) Cassio explicitly denies the affair, which denial Othello immediately accepts and Cassio provides an exculpatory explanation for his possession of the handker-

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31. *Id.* act 4, sc. 2, lines 32-96; act 5, sc. 2, lines 38-86.

32. *Id.* act 5, sc. 2, lines 222-28. Even prior to Othello's final interrogation of Desdemona in the bedroom scene, Othello inquires several times of Emilia, both in and out of the presence of Desdemona and Iago, regarding Desdemona's alleged infidelity. *Id.* act 4, sc. 2. While Emilia, despite Othello's specific inquiries, repeatedly and steadfastly denies the existence of any infidelity or even any evidence of it, prior to the murder of Desdemona she does *not* explain to Othello or Desdemona that she had found the handkerchief and had given it to Iago at his insistence. *Id.* Why does she fail to do so? Obviously, in not doing so she is not acting to protect Desdemona who was only guilty of accidentally dropping the handkerchief in the course of trying to sooth her excited husband. Presumably, Emilia is trying to protect from embarrassment her husband, Iago, who had repeatedly asked her to steal the handkerchief, although she had never acceded to his requests and would never have needed to disclose such requests, and who wanted it for reasons which he would not disclose to her. *Id.* act 3, sc. 3, lines 291-321. Similarly, by not disclosing the story to Othello (or Desdemona, for that matter) Emilia would be protecting herself from the rather technical accusation of disloyalty to her mistress in not returning the handkerchief. And yet, except for this one misstep, Shakespeare portrays Emilia as a good, moral, albeit outspokenly cynical woman who deeply loved both Othello and Desdemona. *See id.* act 4, sc. 3, lines 61-109. While having sincere affection for Iago, Emilia is never blind to his faults. After learning of Desdemona's murder, she does not hesitate to disobey her husband, tell the truth, and expose Iago as a villain. Has Shakespeare erred in having us believe that Emilia would protect her husband or herself from at most a slight embarrassment at the expense of what was clearly a serious risk to Desdemona's relationship to her husband? First, it is clear that even before the murder Emilia knows that Othello is deeply suspicious of Desdemona and Cassio. *Id.* act 4, sc. 2, lines 1-11. Second, Emilia knows that Desdemona is deeply hurt by her husband's groundless suspicions, and that giving the handkerchief to Iago will drive her lady "mad." *Id.* act 3, sc. 3, lines 318-19. Finally, Emilia knows that the missing handkerchief, for which she was largely responsible, is somehow the central cause of the crisis. *Id.* act 3, sc. 4, lines 51-166. Perhaps it is not credible to believe that a woman in Emilia's position would continue the charade. In any event, given her later behavior, it is beyond doubt that if confronted by Desdemona or Othello on the issue and particularly if confronted in the context of a more formal, adversary proceeding where the enormous risk to Desdemona was apparent, Emilia would not have acted to protect herself or Iago and would have readily and convincingly explained the disappearance of the handkerchief. Of course, then, we would not have *Othello*.

chief;<sup>33</sup> and (d) a real "smoking gun," the several letters found on the dead Roderigo which conclusively incriminate Iago, comes to light.<sup>34</sup> When faced with this evidence, Othello immediately acknowledges his error by taking his own life.<sup>35</sup>

In fact, the ease with which Othello becomes convinced of his error suggests that his own belief in the guilt of Desdemona was weak indeed. Based solely on Emilia's statement that she had found the handkerchief and given it to Iago, Othello becomes sufficiently convinced of Iago's villainy that he attempts, unsuccessfully, to kill Iago.<sup>36</sup> Yet, while Emilia's uncorroborated account provides an explanation as to how the handkerchief came into the hands of Iago, it does *not*, by itself, explain Cassio's possession of the handkerchief.

Given Desdemona's undisputed love for Othello, the lack of real "ocular proof" presented by Iago, and the ease by which Othello's reverses his judgment which only moments earlier had allowed him to smother his wife, the evidence of Desdemona's wrongdoing or "witchcraft" seems quite feeble and certainly no stronger than the evidence which was inadequate to convict Othello in Venice of the crime of witchcraft.

## VI. WHY THE DISPARITY IN RESULT?

Othello is acquitted by a court that seems inherently legitimate to all involved. Why then does Othello, as judge, find Desdemona guilty on evidence seemingly of lesser weight than that which was insufficient to convict him in Venice? This seems to be the central puzzle of the play for law and literature.

Literary commentators on Shakespeare have been similarly troubled by this question. Stephen Greenblatt has remarked:

We still must ask how Iago manages to persuade Othello that Desdemona has committed adultery, for all of the cheap tricks Iago plays seem somehow inadequate to produce the unshakable conviction of his wife's defilement that seizes Othello's soul and drives him mad. After all, as Iago taunts Othello, he cannot achieve the point of vantage of God whom the Venetian women [as Iago tells Othello] let "see the pranks/They dare not show their husbands" (3.3.206-7) . . .

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33. *Id.* act 5, sc. 2, lines 304, 325-28.

34. *Id.* act 5, sc. 2, lines 313-23, 329-34.

35. *Id.* act 5, sc. 2, lines 363-64.

36. *Id.* act 5, sc. 2, lines 239-41.

How then, without 'ocular proof' and in the face of both love and common sense, is Othello so thoroughly persuaded?<sup>37</sup>

Similarly, Stanley Cavell has noted that even if Othello believes the claims of Iago, "somewhere he also *knows* them to be false. This is registered in the rapidity with which he is brought to the truth, with no further real evidence, with only a counterstory (about the handkerchief) that burst over him, or from him, as the truth."<sup>38</sup>

How then does the greater evidence against the accused result in acquittal in Venice and the lesser evidence result in conviction in Cyprus?

## VII. COMPARISON OF PROCEDURES IN VENICE AND CYPRUS

It is the contention of this article that the reason for the differing results of the two trials lies not in the different evidence, but in a difference in the legal procedures in Venice and Cyprus. The contrast in process goes a long way to explain the play and the tragedy of Othello.

In Venice, Brabantio, Desdemona's father, supported by the malicious prompting of Iago, brings charges that Othello, the Moor, has seduced his daughter by means of magic. There is a risk of a public riot and even fatal injury when Brabantio and his followers confront Othello.<sup>39</sup> Yet, the danger of public disturbance is dissipated expressly by reason of the alternative method of resolving the dispute. As a result, the charges are presented by Brabantio and are heard by the Duke of Venice and his court.<sup>40</sup>

37. STEPHEN GREENBLATT, *RENAISSANCE SELF-FASHIONING: FROM MORE TO SHAKESPEARE* 247 (1980).

38. CAVELL, *supra* note 6 at 133.

39. *OTHELLO*, *supra* note 2, act 1, sc. 2, lines 60-85.

40. *Id.* act 1, sc. 3, lines 95-105. The Duke fulfills a similar role in the trial of Shylock's lawsuit against Antonio on his "pound of flesh" bond in *The Merchant of Venice*. Ultimately, in *Merchant* the Duke defers his decision to Portia, disguised as a judge, who rules against Shylock on the inventive, if legally questionable, grounds that the "pound of flesh" did not include the right to spill even a "jot of blood." However, prior to Portia's appearance, the Duke is clearly constrained by the law of Venice which he understands to favor Shylock, a despised Jew. It appears the Duke will grant judgment in favor of Shylock. Also, after Portia's ruling on the bond, the Duke of Venice is willing to pardon Shylock from the death sentence which would otherwise be his fate, provided that Shylock convert to Christianity and gift his estate to the Christians. *Othello* repeats the earlier example of the Duke in Venice who is willing to rule in favor of a despised minority and against one of his own if the law so requires. Shakespeare's

The value of the Duke's court is palpable to all participants. Even before the matter of Brabantio's charges are brought to the court's attention, the Duke and his court rationally consider various contradictory evidence regarding the intentions of the enemy Turks and correctly discern their enemy's true plans.<sup>41</sup>

Also, aside from the specific evidence presented to the court in Venice, the play suggests that this court has certain inherent credibility. When the proposal is first made to refer the issue to the Duke, Brabantio is receptive to such an idea. He is not troubled by it at all, despite the stature of Othello and the fact that the same court is simultaneously calling on Othello to defend Venice. Brabantio believes the Duke and his court, "Cannot but feel this wrong as 'twere their own."<sup>42</sup> In addition, both Brabantio and Othello willingly acknowledge the legitimacy of the proceeding before the decision is rendered. Prior to hearing his testimony, Othello tells the court that if they will allow Desdemona to testify in Othello's defense to his marriage to Desdemona, he is also willing to place both his career and his very life at risk.<sup>43</sup> Similarly, Brabantio, before Desdemona testifies, is willing to concede his defeat, "If she confess that she was half the wooer."<sup>44</sup>

What are the procedures which contribute to the court's credibility and its ability to correctly discern the truth of Brabantio's charge? First, the charges are heard by the relatively impartial Duke. Given the fact that Othello's trial on magic charges occurs virtually simultaneously with his being called by the rulers of Venice to defend the state from foreign invaders, it is undeniable that Othello has advantages that would not obtain for a less advantaged accused. Yet, the Duke expressly affirms his impartiality to Brabantio before "the bloody book of law . . . ; yea, though our proper [own] son/Stood in your action."<sup>45</sup> In addition, favoritism to Othello is at least partially balanced by Brabantio's own stature as a senator of Venice and

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Venice compares favorably with the history of virtually all other states in its providing equal protection to minorities.

41. OTHELLO, *supra* note 2, act 1, sc. 3, lines 1-48.

42. *Id.* act 1, sc. 2, line 96.

43. *Id.* act 1, sc. 3, lines 117-20.

44. *Id.* act 1, sc. 3, line 175.

45. *Id.* act 1, sc. 3, lines 67-69.

a member of the ruling tribunal. Moreover, while non-legal considerations of the stature or position of the parties to the litigation may tend to distort the legal process, the availability of this and other mechanisms, such as "jury lawlessness," do tend to mediate the harshness of the letter of the law.

Most importantly, Othello is able to confront his accuser, Brabantio, and is able to compel the testimony of Desdemona, his most helpful witness. Specifically, Othello declares, "I do beseech you,/Send for the lady to the Sagittary/And let her speak of me before her father."<sup>46</sup> Moreover, Othello himself recognizes the importance of his being able to compel the testimony of Desdemona since, as noted *supra*, he tells the court that if she is brought to testify and he is still found guilty of witchcraft, in addition to any other penalty, he agrees to suffer the loss of his office and his life. Desdemona arrives and, as previously indicated, while the substance of her testimony itself is not particularly dispositive, the fact of her testifying provides a strong reason explaining Othello's acquittal.

In Venice, we are shown a rational process whose officers deliberate carefully under pressure. They control passions that might otherwise erupt into violence and they ensure the order and well-being of the society.<sup>47</sup> Most importantly for our purposes here, the cold light of the adversary system gives new meaning to the facts and the correct result is reached. Othello is found innocent.<sup>48</sup>

In contrast, Othello, as the tribunal in Cyprus, considers the accusations of Desdemona's infidelity in her alleged affair with Michael Cassio without the procedural safeguards found in Venice. First, due to his power and the isolation of Cyprus from Venice,<sup>49</sup> Othello is the decision-maker, despite the fact that he is deeply partial in all respects, i.e., he loves Desdemona and he is also most affected by allegations of infidelity. Second, as is common in Continental systems but not in the Anglo-American

46. *Id.* act 1, sc. 3, lines 114-16.

47. WILLIAM SHAKESPEARE, *THE TRAGEDY OF OTHELLO, THE MOOR OF VENICE* xxvi, xxviii (Alvin Kernan ed., Signet Classic 1986) (editorial preface).

48. This does not mean that the losing disputant is comfortable with the outcome. At the conclusion of the matter, Brabantio tells Othello, "Look to her, Moor, if thou hast eyes to see;/She has deceived her father, and may thee." *OTHELLO*, *supra* note 2, act 1, sc. 3, lines 289-90.

49. SHAKESPEARE, *supra* note 47, at xxvii-xxix (editorial preface).



system, Othello, as both the decision-maker and the inquisitor, himself conducts the interrogation of Desdemona.

Even more important is the utter absence of other crucial elements of the English adversary system. In Cyprus, Desdemona pleads with Othello that Cassio, whose alleged hearsay admissions are crucial evidence against her, be called to testify. When Othello accuses her of giving her handkerchief to Cassio, she responds, "No, by my life and soul! / Send for the man and ask him."<sup>50</sup> Again, shortly thereafter, when Othello again accuses her of infidelity with Cassio, and recounts his possession of the handkerchief, she correctly guesses the truth and retorts, "He found it then. / I never gave it him. Send for him hither. / Let him confess a truth."<sup>51</sup> Othello refuses to do so, purportedly based upon his belief, incorrect as it turns out, that Iago has slain Cassio.<sup>52</sup> Thus, Desdemona is explicitly denied the privilege that, in contrast, is granted to Othello in Venice and which Othello himself valued so greatly. Had Cassio been called to testify in Cyprus as Desdemona was called in Venice, the "smoking gun" evidence of the handkerchief would likely have been explained away even to the satisfaction of Othello, as Cassio eventually did shortly after the execution of Desdemona.

Similarly, Desdemona is not allowed to confront her chief accuser, Iago, unlike Othello, who directly confronted his chief accuser, Brabantio, in Venice. Yet, Iago's repeated and malicious accusations against Cassio and Desdemona could have been subjected to "the engine of cross-examination" which would, at the very least, have exposed his obdurate bias against both Cassio and Othello. Thus, there is no means or process to mediate Othello's inflamed passions.

Finally, unlike Venice, where the stature of Brabantio and Othello are considered, in Cyprus there is no consideration of larger matters of public policy, such as the stature of Desdemona or the need for mercy. In Othello's dictatorship of Cyprus, such ameliorative considerations are totally absent. Thus, Othello has no need to appease the emissaries from Venice and he strikes Desdemona without regard for their presence.

In summary, it was not the weight of the evidence of guilt

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50. *Id.* act 5, sc. 2, lines 52-53.

51. *Id.* act 5, sc. 2, lines 69-71.

52. *Id.* act 5, sc. 2, lines 73-74.

in Cyprus which caused the miscarriage of justice, but rather it was the lack of the developed adversary system found in both the fictional Venice and Shakespeare's own England, as well as in our own United States.

#### VIII. THE ACCUSED'S RIGHT TO CALL WITNESSES

The obvious lack of even the outward semblance of impartiality of the tribunal in Cyprus is the most obvious difference between Cyprus and Venice. The failure of Othello to recognize the right of Desdemona to call witnesses on her behalf, in contrast to the Duke's ready acceptance of that privilege, is, however, equally significant.

The right of an accused to call witnesses on his or her behalf is recognized in the Sixth Amendment to the United States Constitution, which provides, in part, that in all criminal prosecutions, "the accused shall enjoy the right . . . to compulsory process for obtaining witnesses in his favor . . ."<sup>53</sup> As explained by Joseph Story in his commentaries, the right to compulsory process was included in the Bill of Rights in reaction to an old common law rule in England that prohibited the introduction by the accused of witnesses in his defense in cases of treason or felony.<sup>54</sup> Story noted, however, that in England since shortly after the accession of James I in 1603 (which is the date when Othello was first produced) the House of Commons had insisted on recognizing the right of witnesses to be sworn on behalf of the defense, and even before the time of adoption of the Bill of Rights in the United States, such a rule had been extended in England to all cases of treason and felony.<sup>55</sup> Thus, the Sixth Amendment right to call witnesses on behalf of an accused was not so much a declaration of a then-doubtful right, but rather an attempt to make sure that such a right was not overlooked.

The leading (and virtually sole) Supreme Court case on this Sixth Amendment right is *Washington v. Texas*,<sup>56</sup> which recog-

53. U.S. CONST. amend. VI.

54. 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1792 (3rd Ed. 1873); see also *Washington v. Texas*, 388 U.S. 14, 19 (1967).

55. 3 STORY, *supra* note 54, § 1792.

56. 388 U.S. 14 (1967). Interestingly, the recent courtroom-film, *PRIMAL FEAR* (Paramount 1996), contains an explicit reference to the accused's Sixth Amendment right to call the State's Attorney as a witness.

nized the application to the states of the constitutional right of a defendant to put witnesses on the stand (as well as to compel their attendance in court) under the "incorporation" doctrine.<sup>57</sup> *Washington* involved a Texas statute (declared unconstitutional by the court) which provided that persons charged as principals, accomplices or accessories in the same crime cannot be introduced as witnesses for each other.<sup>58</sup> The Texas statute was, in fact, the rule applied by Othello in Cyprus where he refused Desdemona's repeated requests that Cassio, Desdemona's alleged accomplice in her alleged adultery, be called as a witness on her behalf.

In the play, Othello justified his refusal to allow Cassio to testify on three separate, and not necessarily inconsistent, grounds: (i) that calling Cassio would exacerbate Desdemona's perjured denial of wrongdoing ("take heed of perjury");<sup>59</sup> (ii) that Cassio had already confessed to his commission of the crime;<sup>60</sup> and (iii) that Cassio was unavailable, i.e., dead ("his mouth stopped").<sup>61</sup> While the second and third justification were factually incorrect, the first justification corresponds to the rationale of the Texas statute at issue in *Washington*. That law and other common law rules prohibited persons charged with the same crime from testifying on behalf of each other on the grounds that "each would try to swear the other out of the charge" and that "the right to present witnesses was subordinate to the court's interest in preventing perjury."<sup>62</sup> The Court in *Washington* rejected such a rationale on the grounds that the right to offer the testimony of witnesses was, part and parcel of "the right to present a defense, the right to present the defendant's version of the facts (as well as the prosecution's) to the jury so it may decide where the truth lies."<sup>63</sup> The Court also stated that the sixth amendment did not futilely grant the defendant the right to obtain the attendance of witnesses "whose testimony he had no right to use."<sup>64</sup> Thus, Othello presents a

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57. *Washington*, 388 U.S. at 17-19.

58. *Id.* at 15-16 n.4.

59. OTHELLO, *supra* note 2, act 5, sc. 2, line 51.

60. *Id.* at act 5, sc. 2, line 68.

61. *Id.* at act 5, sc. 2, line 71.

62. *Washington*, 388 U.S. at 21.

63. *Id.* at 19.

64. *Id.* at 23.

graphic illustration of both the value of the accused's right to call witnesses on his or her behalf and the weakness of the risk-of-perjury justification as a counter to that right.

#### IX. HOW DOES THE FAULTY PROCEDURE MANIFEST ITSELF IN CYPRUS?

Closer examination of how or why Othello arrives at his fallacious conclusion that Desdemona is guilty of adultery may help shed some light on how the absence of the adversary system affects the deliberation process, and also, the inherent perils with which all forms of judging, including the adversarial process, must wrestle. These speculations, while in certain ways inconsistent and not mutually exclusive, may help illuminate tensions in the process of judgment.

##### A. *Rejection of the "Feminine in Man"*

There is a general sense in Othello's condemnation of Desdemona that justice is a male attribute that must overcome the female charms of Desdemona. Most particularly, immediately after Othello has entered Desdemona's bedroom and kissed his sleeping wife, he declares, "O balmy breath, that dost almost persuade/Justice to break her sword."<sup>65</sup> Othello also thinks that he must still this adversary "else she'll betray more men."<sup>66</sup>

In part, this fear of the feminine is characteristic of the military setting of Cyprus, a military outpost in the midst of a war against the Turks. Othello's inquisition of Desdemona resembles a military court-martial where the presence of the enemy is used to justify all kinds of expedencies, e.g., drumhead trials. The idea of an adversary proceeding itself becomes subversive because any adversary (the other) is a tool of the enemy, i.e., the Turks or, more generally, evil. In fact, viewing the trial in Cyprus as one for witchcraft, one can see that Othello views his battle as one against the devil himself. Seen in this light, incorporation of the protections of the adversary system is ludicrous. The devil will always lie and will use tricks, e.g., the testimony of other witnesses or cross-examination, to confound the decision-maker. From this perspective, when faced with the enemy, Othello is best advised to simply rely on his own instincts

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65. OTHELLO, *supra* note 2, act 5, sc. 2, lines 16-17.

66. *Id.* act 5, sc. 2, line 6.

and beliefs, which of course he does.

This resembles some of the legal thought-processes which occur in another fictional setting, that of Herman Melville's "Billy Budd, Sailor."<sup>67</sup> In that tale, Billy Budd, the handsome sailor, is a young man of natural goodness and innocence, with only the defect of a stutter. After being impressed on a British Man-of-War during the Napoleonic Wars, Billy Budd becomes the object of intense hatred on the part of the Sergeant-at-Arms, the Iago-like James Claggert. Claggert concocts Iago-like accusation of mutiny on the part of the loyal and honest Billy Budd. When confronted by Claggert before the ship's captain, Captain Vere, Billy, due to his stutter, is unable to verbalize his defense, and can only strike out his fist at Claggert, killing his accuser instantly. Captain Vere, personally fond of Billy, insists, despite urging of other officers, that Billy not be taken to stand trial before the Admiral, but rather be tried immediately before a drumhead court on the ship. Captain Vere, like Othello, acts as both the prosecution, the chief and only witness against the accused. When members of the drumhead court suggest that the extenuating circumstances surrounding the death of Claggert might call for mercy for Billy Budd, Captain Vere, like Othello, urges the drumhead court to "let not warm hearts betray heads that should be cool." He goes on to exhort that "the feminine in man . . . must be ruled out."<sup>68</sup> Like Captain Vere, Othello insists that "the feminine" in himself be ruled out. Inherent in the inquisitorial/martial method is a fear of the feminine and the co-existence with this difference manifested in and part and parcel of the adversarial process.

### *B. Idealization of Desdemona*

Othello, after being a soldier, has settled his heart and meaning on protecting white, Christian Venice, an ideal of purity and fidelity which to him Desdemona represents. Othello places the physical world and his alien nature outside his ideal world of Venice and Desdemona. Thus, immediately after the first trial scene, Othello proclaims, "My life upon her faith."<sup>69</sup> Later,

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67. HERMAN MELVILLE, *Billy Budd, Sailor*, in GREAT SHORT WORKS OF HERMAN MELVILLE 429 (1969).

68. *Id.* at 486.

69. OTHELLO, *supra* note 2, act 1, sc. 3, line 291.

when he and Desdemona are reunited on Cyprus, he declares to her, "O my soul's joy/ . . . If it were now to die,/ 'Twere now to be most happy."<sup>70</sup> Still later, when Iago has presented to Othello the possibility of her adultery, Othello tells her, "and when I love thee not,/ Chaos is come again."<sup>71</sup> As Stanley Cavell has concluded, Othello has placed a finite woman in the place of God.<sup>72</sup> The tragedy results from Othello's refusal to acknowledge Desdemona's imperfections. As Cavell notes, Othello is "surprised . . . to find that she is flesh and blood. It was the one thing he could not imagine for himself. For if she is flesh and blood then, since they are one, so is he."<sup>73</sup>

The downfall of Othello is in losing Desdemona's power to confirm his image of himself.<sup>74</sup> Othello, because of the destabilizing acts of Iago, loses self confidence in his position and begins to believe that he, himself, is darkness, while concurrently part of him seeks to protect his idealized, perfect world.

After his murder of Desdemona, Othello, distrustful of his own identity, takes revenge on himself as an alien having been bought into the white Venetian world. In a clear reference to his own alien nature, after exposure of his enormous error he speaks "of one whose hand,/ Like the base Judean<sup>[75]</sup> threw a pearl away/ Richer than all his tribe."<sup>76</sup> Finally, in his last words he makes an effort to step out of what he now feels to be his own alien nature. He embraces the idealized Venetian world which Desdemona represented by recalling his service to Venice "in Aleppo once,/ Where a malignant and a turban'd Turk/ Beat a Venetian and traduc'd the state,/ I took by th' throat the circumcised dog/ And smote him, thus. [He stabs himself]"<sup>77</sup>

And thus, Othello bears witness to his idealization of the finite Desdemona. Unable to accept her human imperfections, he becomes susceptible to assuming the worst about her upon the least provocation. Unable to live without the idealized

70. *Id.* act 2, sc. 1, line 184.

71. *Id.* act 3, sc. 3, lines 91-92.

72. CAVELL, *supra* note 6, at 35, 126.

73. *Id.* at 136.

74. *Id.* at 130.

75. In other versions of the text, "Indian" is used. In any event, the reference is to an infidel or unbeliever. OTHELLO, *supra* note 2, act 5, sc. 2, n.352.

76. *Id.* act 5, sc. 2, lines 351-53.

77. *Id.* act 5, sc. 2, lines 357-61.

Desdemona, he condemns her by taking it upon himself to kill the human one.

### C. *Projection of Guilt upon Desdemona*

Another way of seeing Othello's actions is as a projection of his own guilt about sexuality onto Desdemona. In Iago's first soliloquy, where he fashions his plot against Othello, Iago speaks of his intent "to abuse Othello's ears,/That he is too familiar with his wife."<sup>78</sup> The standard reading of this line is that the "he" refers to Cassio and that Iago plans to suggest Cassio and Desdemona are intimate. Stephen Greenblatt has suggested, however, that the "he" refers to Othello, not Cassio. In this reading, there is the suggestion that Othello may believe that Othello's own relationship with Desdemona is adulterous.<sup>79</sup>

According to Greenblatt, Othello's

erotic intensity, this frank acceptance of pleasure and submission to her spouse's pleasure, is . . . as much as Iago's slander the cause of Desdemona's death, for it awakens the deep current of sexual anxiety in Othello, anxiety that with Iago's help expresses itself in quite orthodox fashion as the perception of adultery.

Othello's fear of defilement "is bound up with his own experience of sexual pleasure, while he must destroy Desdemona both for her excessive experience of pleasure and for awakening such sensations in himself."<sup>80</sup>

This suggests that the cause of Othello's wrongful judgment of Desdemona is his projection of his own sexual guilt upon the accused. In Shakespeare's *King Lear*, King Lear speaks to Gloucester about the nature of justice and judges in a way that sheds light upon Othello's judgment of Desdemona:

<i>Lear.</i>	see how yon justice rails upon yon thief. Hark, in thine ear: change places, and, handy-dandy, which is the justice, which is the thief? Thou hast seen a farmer's dog bark at a beggar?
<i>Gloucester.</i>	Ay, sir.

78. *Id.* act 1, sc. 3, lines 396-97.

79. GREENBLATT, *supra* note 37, at 232-33.

80. *Id.* at 250.

*Lear.* And the creature run from the cur? There thou  
 mightst behold the great image of authority; a  
 dog's obeyed in office.  
 Thou rascal beadle, hold thy bloody hand!  
 Why dost thou lash that whore? Strip thy own back.  
 Thou hotly lusts to use her in that kind  
 For which thou whip'st her.<sup>81</sup>

Under this reading, Othello condemns Desdemona because he mistrusts the sexuality which she excites in him. *Othello* becomes an instance where the decision-maker projects his own criminal predilections and feelings of guilt upon the accused so the trial is not so much a search for justice for the accused, but a means of denial or expiation for the judge.

## X. CONCLUSION

In all forms of judging (including the adversary system) there is the risk of making the same errors which Othello did. There is a tendency to want to exclude the other, the different, or, as it was called in *Billy Budd*, the "feminine in man." There is a similar tendency to condemn the accused for not living up to our idealized expectations of him or her. Finally, there is the risk of projecting our own feelings, guilt or unresolved desires upon the accused. The adversary system does not guaranty that this will not happen. But, *Othello* gives us an example of two trials, the first of Othello in Venice for witchcraft, the second of Desdemona in Cyprus for adultery, which in Othello's mind amounted to the same thing. The evidence against Desdemona in the latter was no more convincing than was the evidence against Othello in the former. Yet, one of the most obvious differences between the two was the presence of an adversary system, including an impartial decision-maker and a right to call witnesses, in the first, and the absence of that system in the second.

The well-documented failings of our current adversary system are beyond dispute, particularly as exhibited by our modern-day Othello. Also, it is both unrealistic to expect that a reading of a play will in any way contribute to an understanding, let alone betterment, of our legal system. As Stanley Fish

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81. WILLIAM SHAKESPEARE, *The Tragedy of King Lear* (Jay L. Halio ed., Cambridge University Press 1992) act 4, sc. 6, lines 145-54 (emphasis added).



remarked recently in a similar context, an interpretation of *Othello* examining its race-consciousness in a way so as to be published in a literary journal will not contribute to the national debate over race.<sup>82</sup> Yet, in a way that mere scholarly, philosophical, or even practical proof is unavailing or unconvincing, Shakespeare's *Othello*, in the best sense of the word, "dramatizes" the genuine value worth preserving in the Anglo-American adversarial system.

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82. STANLEY FISH, PROFESSIONAL CORRECTNESS: LITERARY STUDIES AND POLITICAL CHANGE 51 (1995).